

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JOE DASILVA, JR.,

Plaintiff,
vs.

Case No. 20-11358
HON. MARK A. GOLDSMITH

MARK ESPER, et al.

Defendants.

/

SECOND ORDER TO SHOW CAUSE

On October 21, 2020, Plaintiff Dasilva was ordered to show cause why this case should not be dismissed for failure to prosecute. Dasilva's response (Dkt. 18) demonstrates that he made a good faith error to effect service, so his case will not be dismissed at this time. However, he has failed to cure several deficiencies in his action.

- First, Dasilva states in his response that he erroneously served the government Defendants at their places of work, rather than sending copies to the local U.S. attorney and the Attorney General as required by Federal Rule of Civil Procedure 4(i). See Resp. to Order to Show Cause at 3 (Dkt. 18). He then states that he has since sent proper service. Id. (citing Dkt. 17, 17-1, 17-2). However, the docket entries cited only show mailings to the U.S. Department of Justice. Therefore, this proof of service is deficient.
- Second, Dasilva served the Defendants outside the time limit prescribed by Federal Rule of Civil Procedure 4(m) without an order from the Court extending the time for service. Therefore, Dasilva's service on September 9, 2020 was improper. See Certificates of Service (Dkt. 17).
- Third and finally, Dasilva filed two notices to set aside entries of default (Dkt. 14, 15). However, defaults may only be set aside by order of the Court.

Because has shown good cause for his failure to serve Defendants within 90 days of filing his complaint, the Court must extend time for service for an appropriate period. Fed. R. Civ. P. 4. Service must be accomplished no later than January 29, 2021. The clerk of court is instructed to

issue new summonses at Dasilva's request. A response to this order, which need only state and show that service has been accomplished, is due on the same date. Finally, within 14 days of counsel for Defendants entering an appearance, the parties must either file a submit a stipulated order to set aside the entries of default, or a joint memorandum explaining their respective positions on the matter.

Failure by Dasilva to comply with this order will result in dismissal without prejudice.

SO ORDERED.

Dated: December 30, 2020
Detroit, Michigan

s/Mark A. Goldsmith
MARK A. GOLDSMITH
United States District Judge